

In the Matter of Merchant Mariner's Document No. Z-805798-D1
and all other Seaman Documents
Issued to: ROBERT DEWEY FINE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1435

ROBERT DEWEY FINE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 17 July 1963, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for six months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Able Seaman on board the United States SS JAMES McKAY under authority of the document above described, on or about 8 June 1963, Appellant assaulted and battered a crew member by the name of Curtis.

The hearing was held in joinder with that of Curtis who was charged with committing assault and battery on Appellant. Both charges arose from the same sequence of events.

At the hearing Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Chief Cook and Chief Steward Curtis, the person alleged to have been assaulted and battered by Appellant.

In defense, Appellant offered in evidence the testimony of two crew members and his own testimony.

FINDINGS OF FACT

On 8 June 1963, Appellant was serving as an Able Seaman on board the United States SS JAMES McKAY and acting under authority of his document while the ship was in the port of Bremerhaven, Germany.

At approximately 1815, Chief Steward Curtis returned from shore and engaged in a conversation with Rollins, the Chief Cook,

in the messroom of the vessel. Hill, an Able Seaman, made a remark to Curtis and a heated argument followed.

While Curtis and Hill were arguing, Appellant entered the messroom, listened for a while and then said something to Curtis. This resulted in a heated verbal exchange between Appellant and Curtis which culminated in a fist fight between them. The fight was eventually terminated by other crew members.

Appellant's prior record consists of two admonitions.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the decision of the Examiner is not "substantiated by the evidence nor is his opinion supported by the record".

APPEARANCE: Smith and Waltzer of New Orleans, Louisiana by
 Bruce C. Waltzer, Esquire, of Counsel.

OPINION

The Examiner found Appellant guilty of assault and battery after concluding that Appellant and Chief Steward Curtis were equally aggressive in bringing about the fight when they broke loose from the restraining hold of Hill and the Chief Cook, respectively, in order to start fighting with each other.

Having reached this conclusion, the Examiner should have found that both seamen were guilty of the lesser included offense of mutual combat. Commandant's Appeal Decision No. 1398. Since there is evidence in the record to support the version which was accepted by the Examiner, it is concluded that Appellant was guilty of mutual combat and the Examiner's decision is modified to this extent. This does not require any change in the order because there has been no change in the determination of the Examiner as to how the fight started and a suspension on probation is too lenient an order to impose for the offense of assault and battery.

ORDER

The order of the Examiner dated at New Orleans, Louisiana on 17 July 1963 is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 12th day of December 1963.